

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Air Division

**Chapter 335-3-8
Nitrogen Oxides Emissions**

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335-3-8-.01 Standards for Portland Cement Kilns.

(1) Applicability. The requirements of this Rule apply only to Portland cement kilns in the Counties of Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, Dallas, Dekalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston with process rates of at least the following:

- (a) Long dry kilns-12 short tons per hour (TPH) of clinker produced;
- (b) Long wet kilns-10 short TPH of clinker produced;
- (c) Preheater kilns-16 short TPH of clinker produced; and
- (d) Precalciner and preheater/precalciner kilns-22 short TPH of clinker produced.

(2) Definitions. For the purpose of this Rule, the following definitions apply:

(a) "Clinker" means the product of a Portland cement kiln from which finished cement is manufactured by milling and grinding.

(b) "Long Dry Kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is dry.

(c) "Long Wet Kiln" means a kiln 14 feet or larger in diameter, 400 feet or greater in length, which employs no preheating of the feed. The inlet feed to the kiln is a slurry.

(d) "Low-NO_x Burners" means combustion equipment designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel rich zones for initial combustion.

(e) "Mid-kiln System Firing" means secondary firing in kiln systems by injecting solid fuel at an intermediate point in the kiln system using a specially designed fuel injection mechanism for the purpose of decreasing nitrogen oxide (NO_x) emissions through:

1. Burning part of the fuel at a lower temperature; and
2. Reducing conditions at the fuel injection point that may destroy some of the NO_x formed upstream in the kiln burning zone.

(f) "Portland Cement" means a hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

(g) "Portland Cement Kiln" means a system, including any solid, gaseous or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce Portland cement clinker.

(h) "Precalciner Kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers and utilize a second burner to calcine material in a separate vessel attached to the preheater prior to the final fusion in a kiln which forms clinker.

(i) "Preheater Kiln" means a kiln where the feed to the kiln system is preheated in cyclone chambers prior to the final fusion in a kiln which forms clinker.

(3) Standard Requirements. After May 31, 2004, the owner or operator of any Portland cement kiln subject to this Rule shall not operate the kiln during May 1 through September 30 unless the kiln has installed and operates during May 1 to September 30 with at least one of the following: low-NO_x burners, mid-kiln system firing, alternative control techniques or reasonably available control technology approved by the Director and the EPA as achieving at least the same emissions decreases as with low-NO_x burners or mid-kiln system firing.

(4) The owner or operator subject to the requirements of paragraph (3) of this Rule above shall comply with the requirements as follows:

(a) By May 31, 2004, submit to the Department the identification number and type of each Portland cement kiln subject to this Rule, the name and address of the facility where the kiln is located, and the name and telephone number of the person responsible for demonstrating compliance with paragraph (3); and

(b) Submit data, electronically and in a format prescribed and provided by the Department, which reports the total NO_x emissions from May 1 through September 30 of each year as follows:

1. Annual reporting. For each kiln, beginning with emission year 2004 and every year thereafter, by March 31st of the calendar year following the emission year being reported, the data specified in 40 CFR, §§ 51.122(c)(1) and (2) must be submitted to the Department.

2. Triennial reporting. For each kiln, beginning with emission year 2005 and every third year thereafter, by March 31st of the calendar year following the emission year being reported, the data specified in 40 CFR, 51.122(c)(3) must be submitted to the Department.

3. Year 2003 reporting. For each kiln, by March 31, 2004, the data specified in 40 CFR, § 51.122(c)(3) must be submitted to the Department.

4. Year 2007 reporting. For each kiln, by March 31, 2008, the data specified in 40 CFR, § 51.122(c)(3) must be submitted to the Department.

(5) By May 31, 2004, the owner or operator of a kiln subject to this Rule shall submit to the Department a demonstration of compliance with the requirements of paragraph (3). If compliance is being achieved by use of prescribed equipment, for example low-NO_x burners or mid-kiln system firing, the demonstration of compliance shall be written certification to the Department that this equipment is installed and in use. If compliance is being achieved by use of alternative control techniques, approved by the Director and EPA, demonstration of compliance shall be specified by the Director and EPA. In case of compliance proposed to be achieved by use of alternative control techniques, a plan for compliance demonstration shall be submitted to the Department by May 1, 2003. Upon receipt, the Department shall immediately forward a copy of the plan to the EPA. By November 1, 2003, the Director shall specify in writing to the owner or operator of the kiln how compliance shall be demonstrated, this specification consistent with methods and requirements specified by the EPA following its review of the submitted plan.

(6) By December 31 of each year, beginning in 2004, the owner or operator of a Portland cement kiln subject to this Rule shall submit to the Department a written certification that compliance with the requirements of paragraph (3) has been maintained during that year's five-month period May 1 through September 30. The methods of determining that this compliance has been maintained shall be as specified on the major source operating permit issued for the facility at which the kiln is operated.

(7) Beginning May 1, 2004, the owner or operator of a Portland cement kiln subject to this Rule shall maintain records for May 1 through September 30 of each year that include the data as follow:

(a) The date, time, and duration of any startup, shutdown, or malfunction in the operation of the cement kiln or its emissions monitoring equipment or of any scheduled maintenance activity that affects NO_x emissions or emissions monitoring;

(b) The results of any compliance testing; and

(c) Other data required by permit to be maintained.

(8) The records listed in paragraph (7) of this Rule shall be retained on-site for a minimum of 2 years following the calendar year for which they are made and shall be made available to the Department for review upon request.

(9) The requirements of this Rule shall not apply to periods of scheduled maintenance activities that affect NO_x emissions.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: April 6, 2001.

Amended:

| | Date Submitted to EPA | Date Approved by EPA | Federal Register |
|--------------|--------------------------|-------------------------|---------------------|
| Original Reg | MAR 12, 2001 | July 16, 2001 | 66 FR 36919 |

335-3-8-.02 Nitric Acid Manufacturing.

(1) Except as provided in paragraph (2) of this Rule, no person shall cause or permit the emission of nitrogen oxides, calculated as nitrogen dioxide, from nitric acid manufacturing plants in excess of 5.5 pounds per ton of one hundred percent (100%) acid produced.

(2) For nitric acid manufacturing plants within a designed capacity greater than one hundred and fifty (150) tons per day of one hundred percent (100%) acid, no person shall cause or permit the emission of nitrogen oxides, calculated as nitrogen dioxide, from such manufacturing plants in excess of twenty (20) pounds per ton of one hundred percent (100%) acid produced.

Author: James W. Cooper and John E. Daniel

Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: January 18, 1972.

Amended: November 21, 1996.

| | Date Submitted to EPA | Date Approved by EPA | Federal Register |
|--------------|--------------------------|-------------------------|---------------------|
| Original Reg | JAN 25, 1972 | MAY 31, 1972 | 37 FR 10842 |
| 1st Revision | OCT 31, 1989 | MAR 19, 1990 | 55 FR 10062 |
| 2nd Revision | OCT 30, 1996 | JUN 06, 1997 | 62 FR 30991 |

335-3-8-.03 NO_x Emissions from Electric Utility Steam Generating Units.

(1) Applicability. This Rule applies to existing coal-fired electric utility steam generating installations in Walker and Jefferson Counties.

(2) During the compliance period specified in paragraph (3) below, no person shall cause or permit the operation of a coal-fired electric utility steam generating installation in Walker or Jefferson Counties in such a manner that nitrogen oxides (NO_x) are emitted in excess of the emission limits established by the Department in this Rule and specified in the Major Source Operating Permit for the affected unit(s). The BTU-weighted 30-day rolling average NO_x emission rate for the affected units shall be less than or equal to 0.21 pounds per million BTU of heat input, during the compliance period specified in paragraph (3) below.

(3) Beginning May 1, 2003, and each year thereafter, the compliance period shall begin May 1 and end on September 30 of each year. Compliance is based on a 30-day rolling average.

(a) The first calculated 30-day averaging period shall be May 1 through May 30.

(b) The last calculated 30-day averaging period shall be September 1 through September 30.

(4) Testing, Recordkeeping and Reporting.

(a) Continuous emissions monitoring systems (CEMS) to measure nitrogen oxide emissions from each affected unit shall be installed and operated at locations approved by the Director. The CEMS shall meet the specifications and procedures of 40 CFR Part 75 and will be certified and maintained in accordance with 40 CFR Part 75. In addition, each of the CEMS shall undergo a relative accuracy test audit (RATA) on an annual basis at times approved by the Director.

(b) Records of the 30-day average nitrogen oxide emission rate for the affected units shall be kept for a period of five (5) years.

(c) A written report of the 30-day average nitrogen oxide emission rates for the affected units shall be submitted to the Department by the 15th day of each month during the period from May 1 to September 30 of each year. The first report shall be submitted by June 15 and shall include data for the month of May. The final report shall be submitted by October 15 and shall include data for the month of September.

(d) Any exceedances of the NO_x emission rate specified in paragraph (2) of this Rule shall be reported to the Department within two (2) working days of the date of the exceedance.

(e) Additional testing, recordkeeping, and reporting requirements may be necessary and will be specified by the Department at such times as they become necessary.

Author: A. David Ousley, C. Lynn Garthright, and Jeffery W. Kitchens

Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: December 1, 2000.

Amended:

| | Date Submitted to EPA | Date Approved by EPA | Federal Register |
|--------------|--------------------------|-------------------------|---------------------|
| Original Reg | NOV 1, 2000 | NOV 7, 2001 | 66 FR 56223 |

335-3-8-.04 Standards for Stationary Reciprocating Internal Combustion Engines. [RESERVED]

335-3-8-.05 NO_x Budget Trading Program.

(1) Purpose. Rules 335-3-8-.05 through 335-3-8-.13 establish general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program for Alabama's State Implementation Plan as a means of mitigating the interstate transport of ozone and nitrogen oxides pursuant to 40 CFR, § 51.121 and 51.122. The State authorizes the Administrator to assist the State in implementing the NO_x Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.

(2) Definitions. For the purpose of Rules 335-3-8-.05 through 335-3-8-.13, the following definitions apply:

(a) "Account Certificate of Representation" means the completed and signed submission required by Rule 335-3-8-.06 for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and

operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

(b) "Account Number" means the identification number given by the Administrator to each NO_x Allowance Tracking System account.

(c) "Acid Rain Emissions Limitation" means, as defined in 40 CFR, § 72.2 and incorporated by reference in ADEM Admin. Code R. 335-3-18-.01, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the CAA.

(d) "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

(e) "Allocate or Allocation" means the determination by the Department or the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit.

(f) "Automated Data Acquisition and Handling System or DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under Rule 335-3-8-.12, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Rule 335-3-8-.12.

(g) "Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(h) "CAA" means the CAA, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).

(i) "Cogeneration Combined Cycle System" means a combined cycle system that has equipment used to produce electricity and forms the useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes through the sequential use of energy.

(j) "Combined Cycle System" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

(k) "Combustion Turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

(l) "Commence Commercial Operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in paragraph (5) of this Rule, for a unit that is a NO_x Budget unit under paragraph (4) of this Rule on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or re-powered. Except as provided in paragraph (5) of this Rule or Rule 335-3-8-.13, for a unit that is not a NO_x Budget unit under paragraph (4) of this Rule on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under paragraph (4) of this Rule shall be the unit's date of commencement of commercial operation.

(m) "Commence Operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in paragraph (5) of this Rule, for a unit that is a NO_x Budget unit under paragraph (4) of this Rule on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even

if the unit is subsequently modified, reconstructed, or repowered. Except as provided in paragraph (5) of this Rule or Rule 335-3-8-.13, for a unit that is not a NO_x Budget unit under paragraph (4) of this Rule on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under paragraph (4) of this Rule shall be the unit's date of commencement of operation.

(n) "Common Stack" means a single flue through which emissions from two or more units are exhausted.

(o) "Compliance Account" means a NO_x Allowance Tracking System account, established by the Administrator for a NO_x Budget unit under Rule 335-3-8-.10, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x Budget emissions limitation.

(p) "Compliance Certification" means a submission to the Department or the Administrator, as appropriate, that is required under Rule 335-3-8-.08 to report a NO_x Budget source's or a NO_x Budget unit's compliance or noncompliance with this Rule and that is signed by the NO_x authorized account representative in accordance with Rule 335-3-8-.06.

(q) "Continuous Emission Monitoring System or CEMS" means the equipment required under Rule 335-3-8-.12 to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR 75, in a continuous emission monitoring system:

1. Flow monitor;
2. Nitrogen oxides pollutant concentration monitors;
3. Diluent gas monitor (oxy gen or carbon dioxide) when such monitoring is required by Rule 335-3-8-.12;
4. A continuous moisture monitor when such monitoring is required by Rule 335-3-8-.12; and
5. An automated data acquisition and handling system.

(r) "Control Period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(s) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Department and the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with Rule 335-3-8-.12.

(t) "Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.

(u) "Excess Emissions" means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.

(v) "Fossil Fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material. Fossil fuel-fired means, with regard to a unit:

1. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

2. The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

(w) "General Account" means a NO_x Allowance Tracking System account, established under Rule 335-3-8-.10, that is not a compliance account or an overdraft account.

(x) "Generator" means a device that produces electricity.

(y) "Heat Input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Department and the Administrator in accordance with Rule 335-3-8-.12, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(z) "Life-of-the-Unit, Firm Power Contractual Arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;
2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
3. For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

(aa) "Maximum Design Heat Input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

(bb) "Maximum Potential Hourly Heat Input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR 75 to report heat input, this value should be calculated, in accordance with 40 CFR 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR 75, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

(cc) "Maximum Potential NO_x Emission Rate" means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with paragraph 3 of Appendix F of 40 CFR 75, using the maximum potential nitrogen oxides concentration as defined in paragraph 2 of Appendix A of 40 CFR 75, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

(dd) "Maximum Rated Hourly Heat Input" means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

(ee) "Monitoring System" means any monitoring system that meets the requirements of Rule 335-3-8-.12, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

(ff) "Most Stringent State or Federal NO_x Emissions Limitation" means, with regard to a NO_x Budget opt-in source, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

(gg) "Nameplate Capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

(hh) "Non-title V Permit" shall have the same meaning as either an "Air Permit" issued pursuant to the rules in Chapter 335-3-14 or "Synthetic Minor Operating Permit" defined in Chapter 335-3-15.

(ii) "NO_x Allowance" means an authorization by the Department or the Administrator under a NO_x Budget Trading Program established, and approved by the Administrator pursuant to 40 CFR, § 51.121 or § 52.34 to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter, except as provided under Rule 335-3-8-.10(6)(b).

(jj) "NO_x Allowance Deduction or Deduct NO_x Allowances" means the permanent withdrawal of NO_x allowances by the Administrator from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with Rule 335-3-8-.12, or for any other allowance surrender obligation under Rules 335-3-8-.05 through 335-3-8-.13.

(kk) "NO_x Allowances Held or Hold NO_x Allowances" means the NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with Rules 335-3-8-.10 and 335-3-8-.11, in a NO_x Allowance Tracking System account.

(ll) "NO_x Allowance Tracking System" means the system by which the Administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.

(mm) "NO_x Allowance Tracking System Account" means an account in the NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

(nn) "NO_x Allowance Transfer Deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.

(oo) "NO_x Authorized Account Representative" means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with Rule 335-3-8-.06, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with Rule 335-3-8-.10, to transfer or otherwise dispose of NO_x allowances held in the general account.

(pp) "NO_x Budget Emissions Limitation" means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit under Rule 335-3-8-.10(5)(a), (b), (e), and (f) in a control period adjusted by deductions of such NO_x allowances to account for excess emissions for a prior control period under Rule 335-3-8-.10(5)(d) or, for a NO_x Budget opt-in source, to

account for withdrawal from the NO_x Budget Program under Rule 335-3-8-.13(7), or for a change in regulatory status for a NO_x Budget opt-in source under Rule 335-3-8-.13(8).

(qq) "NO_x Budget Opt-in Permit" means a NO_x Budget permit covering a NO_x Budget opt-in source.

(rr) "NO_x Budget Opt-in Source" means a unit that elects to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt-in permit has been issued and is in effect under Rule 335-3-8-.13.

(ss) "NO_x Budget Permit" means the legally binding and enforceable written document, or portion of such document, issued by the Department under Rules 335-3-8-.05 through 335-3-8-.13, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.

(tt) "NO_x Budget Source" means a source that includes one or more NO_x Budget units.

(uu) "NO_x Budget Trading Program" means a multi-state nitrogen oxides air pollution control and emission reduction program established pursuant to 40 CFR § 51.121, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

(vv) "NO_x Budget Unit" means a unit that is subject to the NO_x Budget Trading Program emissions limitation under paragraph (4) of this Rule or Rule 335-3-8-.13.

(ww) "Operating" means, with regard to a unit under Rules 335-3-8-.07(3)(d)2. and 335-3-8-.13(1), having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under Rule 335-3-8-.13(4)(a).

(xx) "Operator" means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or unit for which an application for a NO_x Budget opt-in permit under Rule 335-3-8-.13(4) is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(yy) "Opt-in" means to elect to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt-in permit under Rule 335-3-8-.13.

(zz) "Overdraft Account" means the NO_x Allowance Tracking System account, established by the Administrator under Rule 335-3-8-.10, for each NO_x Budget source where there are two or more NO_x Budget units.

(aaa) "Owner" means any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under Rule 335-3-8-.13(4) is submitted and not denied or withdrawn; or

2. Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under Rule 335-3-8-.13(4) is submitted and not denied or withdrawn; or

3. Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt-in permit under Rule 335-3-8-.13(4) is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest

through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt-in permit under Rule 335-3-8-.13(4) is submitted and not denied or withdrawn; or

4. With respect to any general account, any person who has an ownership interest with respect to NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.

(bbb) "Department" means the Alabama Department of Environmental Management authorized by the Administrator to issue or revise permits to meet the requirements of the NO_x Budget Trading Program in accordance with Rule 335-3-8-.07.

(ccc) "Receive or Receipt of" means, when referring to the Department or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the Department or the Administrator in the regular course of business.

(ddd) "Recordation, Record, or Recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the Administrator from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

(eee) "Reference Method" means any direct test method of sampling and analyzing for an air pollutant or diluent as specified in 40 CFR 60, Appendix A [incorporated by reference in ADEM Admin. Code R. 335-3-10-.03(1)].

(fff) "Serial Number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the Administrator, under Rule 335-3-8-.10(4)(c).

(ggg) "Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of paragraph 502(c) of the CAA, a "source", including a "source" with multiple units, shall be considered a single "facility".

(hhh) "State" means the State of Alabama, the Environmental Management Commission, and the Commission's representatives.

(iii) "State Trading Program Budget" means the total number of NO_x tons apportioned to all NO_x Budget units in the State, in accordance with the NO_x Budget Trading Program, for use in a given control period.

(jjj) "Submit or Serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;
2. By United States Postal Service; or
3. By other means of dispatch or transmission and delivery.

(i) Compliance with any "submission", "service", or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(kkk) "Title V Operating Permit" means a "Major Source Operating Permit" as defined and issued under Chapter 335-3-16. Title V operating permit regulations means the Major Source Operating Permits

regulations in Chapter 335-3-16 that the Administrator has approved or issued as meeting the requirements of Title V of the CAA and 40 CFR 70 or 71.

(lll) "Ton or Tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with Rule 335-3-8-.12, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

(mmm) "Unit" means a fossil fuel-fired stationary boiler, combustion turbine, combined cycle system, or cogeneration combined cycle system.

(nnn) "Unit Load" means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

1. The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or

2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam produced by the unit, including steam for use by the unit.

(ooo) "Unit Operating Day" means a calendar day in which a unit combusts any fuel.

(ppp) "Unit Operating Hour or Hour of Unit Operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

(qqq) "Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with 40 CFR 75 if the NO_x Budget unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(3) Measurements, Abbreviations, and Acronyms. Measurements, abbreviations, and acronyms used in this Rule are defined as follows:

(a) Btu--British thermal unit.

(b) hr--hour.

(c) Kwh--kilowatt hour.

(d) lb--pounds.

(e) mmBtu--million Btu.

(f) MWe--megawatt electrical.

(g) ton--2000 pounds.

(h) CO₂--carbon dioxide.

(i) NO_x--nitrogen oxides.

(j) O₂--oxygen.

(4) Applicability.

(a) The following units in the Counties of Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, Dallas, Dekalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this Rule:

1. Any unit that any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or,

2. Any unit that is not a unit under subparagraph (a)1. of this paragraph and that has a maximum design heat input greater than 250 mmBtu/hr.

(5) Retired Unit Exemption.

(a) This paragraph applies to any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired.

(b) Any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this paragraph, paragraphs (2), (3), (4), and (7) of this Rule and Rules 335-3-8-.09, 335-3-8-.10, and 335-3-8-.11 of this Division.

1. The exemption under subparagraph (b) of this paragraph shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with Rule 335-3-8-.06) shall submit a statement to the Department. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the Department) that the unit is permanently retired and will comply with the requirements of subparagraph (c) of this paragraph. After receipt of the notice under this subparagraph, the Department will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subparagraphs (b) and (c) of this paragraph.

(c) Special provisions.

1. A unit exempt under this paragraph shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

2. The owners and operators of the unit will be allocated allowances in accordance with Rule 335-3-8-.09(m). For each control period for which the retired unit has remaining, one or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NO_x allowances.

3. A unit exempt under this paragraph and located at a source that is required, or but for this exemption would be required, to have a major source (Title V) operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under Rule 335-3-8-.07(3) for the unit not less than 18 months (or such lesser time provided under the Department's major source operating permits regulations for final action on a permit application) prior to the later of May 31, 2004 or the date on which the unit is to first resume operation.

4. A unit exempt under this paragraph and located at a source that is required, or but for this exemption would be required, to have a synthetic minor operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under Rule 335-3-8-.07(3) for the unit not less than 18 months (or such lesser time provided

under the Department's synthetic minor operating permits regulations for final action on a permit application) prior to the later of May 31, 2004 or the date on which the unit is to first resume operation.

5. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this paragraph shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

6. A unit that is exempt under this paragraph is not eligible to be a NO_x Budget opt-in source under Rule 335-3-8-.13.

7. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this paragraph shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the Department or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

8. Loss of exemption.

(i) On the earlier of the following dates, a unit exempt under subparagraph (b) of this paragraph shall lose its exemption:

(I) The date on which the NO_x authorized account representative submits a NO_x Budget permit application under subparagraph (c)2. of this paragraph; or

(II) The date on which the NO_x authorized account representative is required under subparagraphs (c)3. and (c)4. of this paragraph to submit a NO_x Budget permit application.

(ii) For the purpose of applying monitoring requirements under Rule 335-3-8-.12, a unit that loses its exemption under this paragraph shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

(6) Standard Requirements.

(a) Permit Requirements.

1. The NO_x authorized account representative of each NO_x Budget source required to have an enforceable permit and each NO_x Budget unit required to have an enforceable permit at the source shall:

(i) Submit to the Department a complete NO_x Budget permit application under Rule 335-3-8-.07(3) in accordance with the deadlines specified in Rules 335-3-8-.07(2)(b), (c) and (d);

(ii) Submit in a timely manner any supplemental information that the Department determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.

2. The owners and operators of each NO_x Budget source required to have an enforceable permit and each NO_x Budget unit required to have an enforceable permit at the source shall have a NO_x Budget permit issued by the Department and operate the unit in compliance with such NO_x Budget permit.

3. The owners and operators of a NO_x Budget source that are not otherwise required to have an enforceable permit are not required to submit a NO_x Budget permit application, and to have a NO_x Budget permit, under Rule 335-3-8-.07 for such NO_x Budget source.

(b) Monitoring requirements.

1. The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of Rule 335-3-8-.12.

2. The emissions measurements recorded and reported in accordance with Rule 335-3-8-.12 shall be used to determine compliance by the unit with the NO_x emissions limitation under subparagraph (c) below.

(c) Nitrogen Oxides requirements.

1. The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under Rule 335-3-8-.10(5)(a), (b), (e), or (f), as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with Rule 335-3-8-.12, plus any amount necessary to account for excess emissions for a prior control period under Rule 335-3-8-.10(5)(d) or, for a NO_x Budget opt-in source, to account for withdrawal from the NO_x Budget Program under Rule 335-3-8-.13(7), or for a change in regulatory status for a NO_x Budget opt-in source under Rule 335-3-8-.13(8).

2. Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this Division, the CAA, and applicable State law.

3. A NO_x Budget unit shall be subject to the requirements under subparagraph (c)1. of this paragraph starting on the later of May 31, 2004 or the date on which the unit commences operation.

4. NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with Rules 335-3-8-.09, 335-3-8-.10, 335-3-8-.11, and 335-3-8-.13 of this Division.

5. A NO_x allowance shall not be deducted, in order to comply with the requirements under subparagraph (c)1. of this paragraph, for a control period in a year prior to the year for which the NO_x allowance was allocated.

6. A NO_x allowance allocated by the Department or the Administrator under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under paragraph (5) of this Rule and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.

7. A NO_x allowance allocated by the Department or the Administrator under the NO_x Budget Trading Program does not constitute a property right.

8. Upon recordation by the Administrator under Rules 335-3-8-.10, 335-3-8-.11, or 335-3-8-.13, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x budget permit of the NO_x budget unit by operation of law without further review.

(d) Excess emissions requirements.

1. The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:

(i) Surrender the NO_x allowances required for deduction under Rule 335-3-8-.10(5)(d)1.; and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under 335-3-8-.10(5)(d)3.

(e) Recordkeeping and Reporting requirements.

1. Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the Department or the Administrator.

(i) The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with Rule 335-3-8-.06(4); provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

(ii) All emissions monitoring information, in accordance with Rule 335-3-8-.12; provided that to the extent that Rule 335-3-8-.12 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Trading Program.

(iv) Copies of all documents used to complete a NO_x Budget permit application and any other submission under the NO_x Budget Trading Program or to demonstrate compliance with the requirements of the NO_x Budget Trading Program.

2. The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under Rules 335-3-8-.08, 335-3-8-.12, or 335-3-8-.13.

(f) Liability.

1. Any person who knowingly violates any requirement or prohibition of the NO_x Budget Trading Program, a NO_x Budget permit, or an exemption under paragraph (5) of this Rule shall be subject to enforcement pursuant to applicable State or Federal law.

2. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

3. No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.

4. Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Trading Program.

5. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of a NO_x Budget source) shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.

6. Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under Rule 335-3-8-.12, the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) Effect on other authorities. No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under paragraph (5) of this Rule shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of the applicable, approved State implementation plan, an enforceable permit, or the CAA.

(7) Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

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335-3-8-.06 Authorized Account Representative for NO_x Budget Sources.

(1) Authorization and responsibilities of the NO_x authorized account representative.

(a) Except as provided under paragraph (2) below, each NO_x Budget source, including all NO_x Budget units at the source, shall have one and only one NO_x authorized account representative, with regard to all matters under the NO_x Budget Trading Program concerning the source or any NO_x Budget unit at the source.

(b) The NO_x authorized account representative of the NO_x Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under paragraph (4) of this Rule, the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x Budget source represented and each NO_x Budget unit at the source in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the Department, the Administrator, or a court regarding the source or unit.

(d) No NO_x Budget permit shall be issued, and no NO_x Allowance Tracking System account shall be established for a NO_x Budget unit at a source, until the Administrator has received a complete account certificate of representation under paragraph (4) of this Rule for a NO_x authorized account representative of the source and the NO_x Budget units at the source.

(e) Each submission under the NO_x Budget Trading Program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

1. The Department and the Administrator will accept or act on a submission made on behalf of owner or operators of a NO_x Budget source or a NO_x Budget unit only if the submission has been made, signed, and certified in accordance with subparagraph (e) of this paragraph.

(2) Alternate NO_x authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under paragraph (4) of this Rule, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(c) Except in this paragraph and paragraphs (1)(a), (3), and (4) of this Rule, and Rule 335-3-8-.10(2), whenever the term "NO_x authorized account representative" is used in Rules 335-3-8-.05 through 335-3-8-.13, the term shall be construed to include the alternate NO_x authorized account representative.

(3) Changing the NO_x authorized account representative and the alternate NO_x account representative; changes in owners and operators.

(a) Changing the NO_x authorized account representative. The NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete

account certificate of representation under paragraph (4) of this Rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(b) Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under paragraph (4) of this Rule. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(c) Changes in the owners and operators.

1. In the event a new owner or operator of a NO_x Budget source or a NO_x Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Department or the Administrator, as if the new owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a NO_x Budget source or a NO_x Budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

(4) Account certificate of representation.

(a) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the Administrator:

1. Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account certificate of representation is submitted.

2. The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.

3. A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.

4. The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department, the Administrator, or a court regarding the source or unit."

5. The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(b) Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department or the Administrator. Neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(5) Objections concerning the NO_x authorized account representative.

(a) Once a complete account certificate of representation under paragraph (4) of this Rule has been submitted and received, the Department and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under paragraph (4) of this Rule is received by the Administrator.

(b) Except as provided in subparagraph (3)(a) or (b) of this Rule, no objection or other communication submitted to the Department or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the Department or the Administrator under the NO_x Budget Trading Program.

(c) Neither the Department nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

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335-3-8-.07 Permits.

(1) General NO_x Budget trading program permit requirements.

(a) For each NO_x Budget source required to have an enforceable permit, such permit shall include a NO_x Budget permit administered by the Department. Any requirements of the NO_x Budget permit shall be considered federally enforceable.

1. For NO_x Budget sources required to have a major source operating permit, the NO_x Budget portion of the major source operating permit shall be administered in accordance with the Department's major source operating permits regulations promulgated under Chapter 335-3-16, except as provided otherwise by this Rule or Rule 335-3-8-.13. The applicable provisions of such major source operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield,

operating permit issuance, operating permit revision and reopening, public participation, State review, and review by the Administrator.

2. For NO_x Budget sources required to have a non-title V permit, the NO_x Budget portion of the permit shall be administered in accordance with Chapter 335-3-14 or 335-3-15, except as provided otherwise by this Rule or Rule 335-3-8-.13. The applicable provisions of such permit regulations may include, but are not limited to, provisions addressing permit applications, permit issuance, permit revision and reopening, public participation, and review by the Administrator.

(b) Each NO_x Budget permit (including a draft or proposed NO_x Budget permit, if applicable) shall contain all applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subparagraph (a) of this paragraph.

(2) Submission of NO_x Budget permit applications.

(a) Duty to apply. The NO_x authorized account representative of any NO_x Budget source required to have an enforceable permit shall submit to the Department a complete NO_x Budget permit application under paragraph (3) of this Rule by the applicable deadline in subparagraph (b) or (c) below.

(b) For NO_x Budget sources required to have a major source operating permit:

1. For any source, with one or more NO_x Budget units under Rule 335-3-8-.05(4) that commenced operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under paragraph (3) of this Rule covering such NO_x Budget units to the Department at least 18 months (or such lesser time provided under Chapter 335-3-16 for final action on a permit application) before May 31, 2004.

2. For any source, with any NO_x Budget unit under Rule 335-3-8-.05(4) that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under paragraph (3) of this Rule covering such NO_x Budget unit to the Department at least 18 months (or such lesser time provided under Chapter 335-3-16 for final action on a permit application) before the later of May 31, 2004 or the date on which the NO_x Budget unit commences operation.

(c) For NO_x Budget sources required to have a non-title V permit:

1. For any source, with one or more NO_x Budget units under Rule 335-3-8-.05(4) that commenced operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under paragraph (3) of this Rule covering such NO_x Budget units to the Department at least 18 months (or such lesser time provided under the Department's permit regulations in Chapter 335-3-14 or 335-3-15 for final action on a permit application) before May 31, 2004.

2. For any source, with any NO_x Budget unit under Rule 335-3-8-.05(4) that commenced operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under paragraph (3) of this Rule covering such NO_x Budget unit to the Department at least 18 months (or such lesser time provided under the Department's permit regulations in Chapter 335-3-14 or Chapter 335-3-15 for final action on a permit application) before the later of May 31, 2004 or the date on which the NO_x Budget unit commences operation.

(d) Duty to reapply. For a NO_x Budget source required to have a major source operating permit, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under paragraph (3) of this Rule for the NO_x Budget source covering the NO_x Budget units at the source in accordance with the Department's major source operating permits regulations in Chapter 335-3-16 addressing operating permit renewal.

(3) Information requirements for NO_x Budget permit applications. A complete NO_x Budget permit application shall include the following elements concerning the NO_x Budget source for which the application is submitted, in a format prescribed by the Department:

(a) Identification of the NO_x Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each NO_x Budget unit at the NO_x Budget source and whether it is a NO_x budget unit under Rules 335-3-8-.05(4) or 335-3-8-.13;

(c) The standard requirements under Rule 335-3-8-.05(6); and

(d) For each NO_x Budget opt-in unit at the NO_x Budget source, the following certification statements by the NO_x authorized account representative:

1. "I certify that each unit for which this permit application is submitted under Rule 335-3-8-.13 is not a NO_x Budget unit under Rule 335-3-8-.05(4) and is not covered by a retired unit exemption under Rule 335-3-8-.05(5) that is in effect."

2. If the application is for an initial NO_x Budget opt-in permit, "I certify that each unit for which this permit application is submitted under Rule 335-3-8-.13 is currently operating, as that term is defined under Rule 335-3-8-.05(2)."

(4) NO_x Budget permit contents.

(a) Each NO_x Budget permit (including any draft or proposed NO_x Budget permit, if applicable) will contain, in a format prescribed by the Department, all elements required for a complete NO_x Budget permit application under paragraph (3) of this Rule.

(b) Each NO_x Budget permit is deemed to incorporate automatically the definitions of terms under Rule 335-3-8-.05(2) and, upon recordation by the Administrator under Rules 335-3-8-.10, 335-3-8-.11, or 335-3-8-.13 of this Division, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x Budget units covered by the permit or the overdraft account of the NO_x Budget source covered by the permit.

(5) Effective date of initial NO_x Budget permit. The initial NO_x Budget permit covering a NO_x Budget unit for which a complete NO_x Budget permit application is timely submitted under subparagraph (2)(b) or 2(c) of this Rule shall become effective by the later of:

(a) May 31, 2004;

(b) May 1 of the year in which the NO_x Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NO_x Budget unit commences operation, if the unit commences operation during a control period; or

(d) May 1 of the year following the year in which the NO_x Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

(6) NO_x Budget permit revisions.

(a) For a NO_x Budget source with a major source operating permit, except as provided in subparagraph (4)(b) of this Rule, the Department will revise the NO_x Budget permit, as necessary, in accordance with the Department's major source operating permits regulations in Chapter 335-3-16 addressing permit revisions.

(b) For a NO_x Budget source with a non-title V permit, except as provided in subparagraph (4)(b) of this Rule, the Department will revise the NO_x Budget permit, as necessary, in accordance with the Department's permit regulations in Chapter 335-3-14 or 335-3-15, as applicable.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-16, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

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335-3-8-.08 Compliance Certification.

(1) Compliance certification report.

(a) Applicability and deadline. For each control period in which one or more NO_x Budget units at a source are subject to the NO_x Budget emissions limitation, the NO_x authorized account representative of the source shall submit to the Department and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) Contents of report. The NO_x authorized account representative shall include in the compliance certification report under subparagraph (a) of this paragraph the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NO_x Budget emissions limitation for the control period covered by the report:

1. Identification of each NO_x Budget unit;
2. The serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under Rule 335-3-8-.10(5) for the control period;
3. For units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with Rule 335-3-8-.12, the percentage of allowances that is to be deducted from each unit's compliance account under Rule 335-3-8-.10(5)(e); and
4. The compliance certification under subparagraph (c) of this paragraph.

(c) Compliance certification. In the compliance certification report under subparagraph (a) above, the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to the unit, including:

1. Whether the unit was operated in compliance with the NO_x Budget emissions limitation;
2. Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with Rule 335-3-8-.12;
3. Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Rule 335-3-8-.12. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report re-submissions has been made;
4. Whether the facts that form the basis for certification under Rule 335-3-8-.12 of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under Rule 335-3-8-.12, if any, has changed; and
5. If a change is required to be reported under subparagraph (c)4. of this paragraph, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor re-certification.

(2) Department's and Administrator's action on compliance certifications.

- (a) The Department or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.
- (b) The Administrator may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subparagraph (a) of this paragraph.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

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335-3-8-.09 NO_x Allowance Allocations.

(1) State Trading Program Budget. The State trading program budget allocated by the Department under paragraph (3) of this Rule for a control period will equal the total number of tons of NO_x emissions apportioned to the NO_x Budget units under Rule 335-3-8-.05(4) in the State for the control period, as determined by the applicable, approved State Implementation Plan.

(2) Timing Requirements for NO_x Allowance Allocations.

(a) By April 6, 2001, the Department will submit to the Administrator the NO_x allowance allocations, in accordance with paragraph (3) of this Rule, for the control periods in 2004, 2005, and 2006.

(b) By April 1, 2004 and April 1 of every third year thereafter (i.e. 2007, 2010, 2013, etc.), the Department will submit to the Administrator the NO_x allowance allocations, in accordance with paragraph (3) of this Rule, for the control periods in the three years that are three, four, and five years, respectively, after the year of the applicable deadline for submission under this subparagraph (b). If the Department fails to submit to the Administrator the NO_x allowance allocations in accordance with this subparagraph (b), the Administrator will allocate, for the applicable control periods, the same number of NO_x allowances as were allocated for the preceding control periods.

(3) NO_x Allowance Allocations.

(a) Definitions. For the purpose of this Rule, the following definitions apply:

1. Baseline NO_x Budget Unit. A NO_x Budget unit that either:

(i) Commenced operation on or before May 1, 1999; or

(ii) Submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before October 2, 2000.

2. Replacement NO_x Budget Unit.

(i) A NO_x Budget unit, which replaces at the same facility, a Baseline NO_x budget unit with the same or less design heat input capacity; or

(ii) The portion of a NO_x Budget unit, which replaces at the same facility, a Baseline NO_x Budget unit with the same or less design heat input capacity.

3. New NO_x Budget Unit.

(i) A NO_x Budget unit that does not meet the definition of either Baseline NO_x Budget Unit or Replacement NO_x Budget Unit as defined in (3)(a)1. and (3)(a)2. of this Rule; or

(ii) The portion of a NO_x Budget unit that does not meet the definition of either Baseline NO_x Budget Unit or Replacement NO_x Budget Unit as defined in (3)(a)1. and (3)(a)2. of this Rule.

(b) Determination of Heat Input.

1. The heat input (in mmBtu) used for calculating NO_x allowance allocations under subparagraph (2)(a) of this Rule will be:

(i) For a baseline NOX Budget unit that commenced operation on or before May 1, 1999, the average of the two highest amounts of the unit's heat input for the control periods in 1997, 1998, and 1999; or

(ii) For a baseline NOX Budget unit that did not commence operation on or before May 1, 1999 but had submitted a permit application to the Department that was affirmatively deemed complete by the Department in writing on or before October 2, 2000, the expected actual ozone season heat input based on actual utilization data of similar sources.

2. The heat input (in mmBtu) used for calculating NOX allowance allocations under subparagraph (2)(b) of this Rule that are to be submitted to the Administrator on April 1, 2004 will be:

(i) For a baseline or replacement NOX Budget unit that commenced operation on or before May 1, 2001, the average of the two highest amounts of the unit's heat input for the control periods in 2001, 2002, and 2003; or

(ii) For a baseline or replacement NOX Budget unit that did not commence operation on or before May 1, 2001 but did commence operation on or before May 1, 2002, the average heat input for the control periods in 2002 and 2003; or

(iii) For a baseline or replacement NOX Budget unit that did not commence operation on or before May 1, 2002 but did commence operation on or before May 1, 2003, the heat input for the control period in 2003; or

(iv) For a replacement NOX Budget unit that did not commence operation on or before May 1, 2003, the average of the two highest amounts of the heat inputs for the control periods in 2001, 2002, and 2003 for the baseline NOX Budget unit that it replaced.

(v) For a new NOX Budget unit that commenced operation on or before May 1, 2003, the average of the two highest amounts of the unit's heat input for the control periods in 2001, 2002, and 2003; or

(vi) For a new NOX Budget unit that did not commence operation on or before May 1, 2003, the expected actual ozone season heat input based on actual utilization data of similar sources.

3. The heat input (in mmBtu) used for calculating NOX allowance allocations under subparagraph (2)(b) of this Rule that are to be submitted to the Administrator on April 1, 2007 and all subsequent years will be:

(i) For a baseline NOX Budget unit, the average of the two highest amounts of the unit's heat input for the three most recent control periods (e.g. allocations calculated for submission to the Administrator on April 1, 2007 will be based on ozone season heat inputs from 2004, 2005, and 2006); or

(ii) For a replacement NOX Budget unit, if the average of the two highest amounts of the unit's heat input for the three most recent control periods is less than or equal to the average of the two highest amounts of the ozone season heat inputs of the baseline NOX Budget unit that it replaced during the last three control periods that it operated, the unit's calculated average ozone season heat input will be used; or

(iii) For a replacement NOX Budget unit, if the average of the two highest amounts of the unit's heat input for the three most recent control periods is greater than the average of the two highest amounts of the ozone season heat inputs of the baseline NOX Budget unit that it replaced during the last three control periods that it operated, the average of the two highest amounts of the ozone season heat inputs of the baseline NOX Budget unit that it replaced during the last three control periods that it operated will be used; or

(iv) For a new NOX Budget unit that commenced operation prior to or during the most recent control period, the average of the two highest amounts of the unit's heat input for the three most recent control periods; or

(v) For a new NOX Budget unit that did not commence operation prior to or during the most recent control period, the expected actual ozone season heat input based on actual utilization data of similar sources.

4. The unit's total heat input for the control period in each year specified under subparagraph (a) of this paragraph will be determined in accordance with 40 CFR 75 if the NOX Budget unit was otherwise subject to the requirements of 40 CFR 75 for the year, or will be based on the best available data reported to the Administrator and the Department for the unit if the unit was not otherwise subject to the requirements of 40 CFR 75 for the year.

(c) Establishment of Baseline and Retired Unit Allowance Pools. At the time NOX allowances are initially allocated to baseline NOX Budget units under subparagraph (e)1. of this paragraph, each unit's allocation will be permanently recorded as that unit's "Baseline Allowance". This value will be used to calculate the following:

1. Baseline Allowance Pool. The Baseline Allowance Pool shall be calculated each time NOX allowances are allocated under subparagraph (2)(b) of this Rule and shall equal the sum of the Baseline Allowances for all baseline NOX Budget units that have not retired in accordance with Rule 335-3-8-.05(5).

2. Retired Unit Allowance Pool. The Retired Unit Allowance Pool shall be calculated each time NOX allowances are allocated under subparagraph (2)(b) of this Rule and shall equal the sum of the Baseline Allowances for all NOX Budget units that have retired in accordance with Rule 335-3-8-.05(5).

(d) Adjustment Ratios. To ensure that the total number of NOX allowances allocated under paragraph (3) of this Rule equals the number of tons of NOX emissions in the State trading program budget, the following ratios may be applied to the calculated NOX allowance allocations as appropriate.

1. Baseline Adjustment Ratio. The Baseline Adjustment Ratio is the total number of NOX allowances in the Baseline Allowance Pool divided by the total number of NOX allowances calculated for baseline NOX Budget units for a control period prior to any adjustments.

2. Alternate Baseline Adjustment Ratio. If there are no New NOX Budget Units for which allocations must be calculated, the Alternate Baseline Adjustment Ratio is the total number of tons of NOX emissions in the State trading program budget divided by the total number of NOX allowances calculated for baseline and replacement NOX Budget units for a control period prior to any adjustments.

(e) Calculation of NOX Allowances for Baseline NOX Budget Units.

1. For each control period under subparagraph (2)(a) of this Rule, the Department will allocate NOX allowances to all baseline NOX Budget units in accordance with the following procedures:

(i) The Department will allocate NOX allowances to each NOX Budget unit under Rule 335-3-8-.05(4)(a)1. in an amount equaling 0.15 lb/mmBtu, or the unit's permitted NOX limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)1. of this paragraph, multiplied by the ratio of the total number of tons of NO_x emissions in the State trading program budget divided by the total number of NO_x allowances calculated for baseline NO_x Budget units for a control period prior to any adjustments, and then rounded to the nearest whole NOX allowance as appropriate.

(ii) The Department will allocate NOX allowances to each NOX Budget unit under Rule 335-3-8-.05(4)(a)2. in an amount equaling 0.17 lb/mmBtu or the unit's permitted NOX limit (expressed as

lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)1. of this paragraph, multiplied by the ratio of the total number of tons of NO_x emissions in the State trading program budget divided by the total number of NO_x allowances calculated for baseline NO_x Budget units for a control period prior to any adjustments, and then rounded to the nearest whole NOX allowance as appropriate.

2. For each control period under subparagraph (2)(b) of this Rule, the Department will allocate NOX allowances to all baseline NOX Budget units in accordance with the following procedures:

(i) The Department will allocate NOX allowances to each NOX Budget unit under Rule 335-3-8-.05(4)(a)1. in an amount equaling 0.15 lb/mmBtu or the unit's permitted NOX limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)2. or (b)3. of this paragraph, multiplied by the Baseline Adjustment Ratio or, if no new NO_x Budget units have been identified at the time allocations are calculated, the Alternate Baseline Adjustment Ratio, and then rounded to the nearest whole NOX allowance as appropriate. These NOX allowances may be further adjusted in accordance with subparagraph (h) of this paragraph where necessary.

(ii) The Department will allocate NOX allowances to each NOX Budget unit under Rule 335-3-8-.05(4)(a)2. in an amount equaling 0.17 lb/mmBtu or the unit's permitted NOX limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)2. or (b)3. of this paragraph, multiplied by the Baseline Adjustment Ratio or, if no new NO_x Budget units have been identified at the time allocations are calculated, the Alternate Baseline Adjustment Ratio, and then rounded to the nearest whole NOX allowance as appropriate. These NOX allowances may be further adjusted in accordance with subparagraph (h) of this paragraph where necessary.

(f) Calculation of NOX Allowances for Replacement NOX Budget Units. For each control period under subparagraph (2)(b) of this Rule, after calculating NOX allowances for all baseline NOX Budget units that have not retired in accordance with Rule 335-3-8-.05(5), the Department will allocate NOX allowances from the Retired Unit Allowance Pool to all replacement NOX Budget units in accordance with the following procedures:

1. For each replacement NOX Budget unit under Rule 335-3-8-.05(4)(a)1. that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under subparagraph (2)(b) of this Rule, the number of NOX allowances allocated for each applicable control period will be equal to 0.15 lb/mmBtu, or the unit's permitted NOX limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)2. or (b)3. of this paragraph, multiplied by the Baseline Adjustment Ratio or, if no new NO_x Budget units have been identified at the time allocations are calculated, the Alternate Baseline Adjustment Ratio, and then rounded to the nearest whole NOX allowance as appropriate. These NOX allowances may be further adjusted in accordance with subparagraph (i) of this paragraph where necessary.

2. For each replacement NOX Budget unit under Rule 335-3-8-.05(4)(a)2. that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under subparagraph (2)(b) of this Rule, the number of NOX allowances allocated for each applicable control period will be equal to 0.17 lb/mmBtu, or the unit's permitted NOX limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)2. or (b)3. of this paragraph, multiplied by the Baseline Adjustment Ratio or, if no new NO_x Budget units have been identified at the time allocations are calculated, the Alternate Baseline Adjustment Ratio, and then rounded to the nearest whole NOX allowance as appropriate. These NOX allowances may be further adjusted in accordance with subparagraph (i) of this paragraph where necessary.

(g) Calculation of NOX Allowances for New NOX Budget Units. For each control period under subparagraph (2)(b) of this Rule, after calculating NOX allowances for all baseline NOX Budget units that have not retired in accordance with Rule 335-3-8-.05(5) and calculating NOX allowances for all replacement NOX Budget Units, the Department will allocate NOX allowances remaining in the Retired Unit Allowance Pool to all new NOX Budget units in accordance with the following procedures:

1. For each new NOX Budget unit under Rule 335-3-8-.05(4)(a)1. that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under subparagraph (2)(b) of this Rule, the number of NOX allowances allocated for each applicable control period will be equal to 0.15 lb/mmBtu, or the unit's permitted NOX limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)2. or (b)3. of this paragraph, multiplied by the Baseline Adjustment Ratio, and then rounded to the nearest whole NOX allowance as appropriate. These NOX allowances may be further adjusted in accordance with subparagraph (j) of this paragraph where necessary.

2. For each new NOX Budget unit under Rule 335-3-8-.05(4)(a)2. that commenced operation or submitted a permit application affirmatively deemed complete by the Department in writing on or before March 1 of the year allocations are to be submitted to the Administrator under subparagraph (2)(b) of this Rule, the number of NOX allowances allocated for each applicable control period will be equal to 0.17 lb/mmBtu, or the unit's permitted NOX limit (expressed as lb/mmBtu), whichever is less, multiplied by the heat input determined under subparagraph (b)2. or (b)3. of this paragraph, multiplied by the Baseline Adjustment Ratio, and then rounded to the nearest whole NOX allowance as appropriate. These NOX allowances may be further adjusted in accordance with subparagraph (j) of this paragraph where necessary.

(h) Adjustment of Baseline NOx Allowance Allocations. If NOX allowances remain in the Retired Unit Allowance Pool after allocations are made to all replacement and new NOX Budget units in accordance with subparagraphs (f) and (g) of this paragraph, these NOx allowances will be allocated on a pro rata basis to the baseline NOX Budget units for the applicable control periods.

(i) Adjustment of Replacement NOx Allowance Allocations. If the total number of calculated NOX allowances allocated to all replacement NOX Budget units under subparagraph (f) of this paragraph exceeds the number of NOX allowances in the Retired Unit Allowance Pool, each unit's allocation will be further adjusted by multiplying by the ratio of the number of NOX allowances in the Retired Unit Allowance Pool divided by the total number of NOX allowance allocations to all replacement NOX Budget units under subparagraph (f) of this paragraph so that the number of NOX allowances in the Retired Unit Allowance Pool is not exceeded. The adjusted NOX allowance allocations will be rounded to the nearest ton, as appropriate.

(j) Adjustment of New NOx Allowance Allocations. If the total number of calculated NOX allowances allocated to all new NOX Budget units under subparagraph (f) of this paragraph exceeds the number of NOX allowances remaining in the Retired Unit Allowance Pool after allocation to replacement NOX Budget units, each unit's allocation will be further adjusted by multiplying by the ratio of the number of NOX allowances remaining in the Retired Unit Allowance Pool after allocation to replacement NOX Budget units divided by the total number of NOX allowance allocations to new replacement NOX Budget units under subparagraph (f) of this paragraph so that the total number of NOX allowances in the Retired Unit Allowance Pool is not exceeded. The adjusted NOX allowance allocations will be rounded to the nearest ton, as appropriate.

(k) NOX allowances allocated to baseline NOX Budget units based on heat inputs determined in accordance with subparagraph (b)1.(ii) of this paragraph shall not be banked, as described under Rule 335-3-8-.10(6), or transferred, as described under Rule 335-3-8-.11, by the NOX Budget unit to which the NOX allowances were allocated if the unit does not commence operation prior to or during the control period for which NOX allowances were allocated. The NOX allowances will be transferred by the Department pro rata to baseline NOX Budget units that were allocated NOX allowances in accordance with subparagraphs (b)1.(i) of this paragraph. By November 1 of the same year, the Department shall notify the Administrator of the appropriate NOX allowance transfers.

(l) NOX allowances allocated to new NOX Budget units based on heat inputs determined in accordance with subparagraphs (b)2.(vi) or (b)3.(v) of this paragraph shall not be banked, as described under Rule 335-3-8-.10(6), or transferred, as described under Rule 335-3-8-.11, by the NOX Budget unit to which the NOX allowances were allocated if the unit does not commence operation prior to or during the control period for which NOX allowances were allocated. The NOX allowances will be transferred by the Department pro rata to NOX Budget units that were allocated NOX allowances in accordance with subparagraphs (b)2.(i) through (v) or (b)3.(i) through (iv) of this paragraph. By November 1 of the same year, the Department shall notify the Administrator of the appropriate NOX allowance transfers.

(m) NOX allowances will not be allocated to NOX Budget units that retire under 335-3-8-.05(5) prior to the date NOX allowance allocations are submitted to the Administrator under subparagraphs (2)(a) or (2)(b).

(n) The total NOX allowances allocated for any control period in accordance with subparagraphs 335-3-8-.09(3)(e), (f), and (g) shall not exceed the State Trading Program Budget as determined by the applicable, approved State Implementation Plan.

Author: Ronald W. Gore

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335-3-8-.10 NO_x Allowance Tracking System.

(1) NO_x Allowance Tracking System accounts.

(a) Nature and function of compliance accounts and overdraft accounts. Consistent with subparagraph (2)(a) of this Rule, the Administrator will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with two or more NO_x Budget units. Allocations of NO_x allowances pursuant to Rule 335-3-8-.09 or Rule 335-3-8-.13(9) and deductions or transfers of NO_x allowances pursuant to Rules 335-3-8-.08(2), 335-3-8-.10(7), 335-3-8-.11, or 335-3-8-.13 will be recorded in the compliance accounts or overdraft accounts in accordance with this Rule.

(b) Nature and function of general accounts. Consistent with paragraph (2) of this Rule, the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to Rule 335-3-8-.11 will be recorded in the general account in accordance with this Rule.

(2) Establishment of accounts.

(a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under Rule 335-3-8-.06(4), the Administrator will establish:

1. A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and

2. An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.

(b) General accounts.

1. Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(ii) The NO_x authorized account representative, organization name and type of organization;

(iii) A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(iv) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(v) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(vi) Unless otherwise required by the Department or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the Department nor the Administrator. Neither the Department nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Upon receipt by the Administrator of a complete application for a general account under subparagraph (b)1. of this paragraph:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the

persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iv) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subparagraph (b)2.(iii) of this paragraph above.

3. An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(i) Upon receipt by the Administrator of a complete application for a general account under subparagraph (b)1. of this paragraph, any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

4. Changing the NO_x authorized account representative and the alternate NO_x authorized account representative; changes in ownership interest.

(i) Changing the NO_x authorized account representative. The NO_x authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subparagraph (b)1. of this paragraph. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(ii) Changing the alternate NO_x authorized account representative. The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under subparagraph (b)1. of this paragraph. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

(iii) Changes in ownership interest.

(I) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any

alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

(II) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

5. Once a complete application for a general account under subparagraph (b)1. of this paragraph has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under subparagraph (b)1. of this paragraph is received by the Administrator.

(i) Except as provided in subparagraph (b)4. of this paragraph, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the Administrator under the NO_x Budget Trading Program.

(ii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

(c) Account identification. The Administrator will assign a unique identifying number to each account established under subparagraph (a) or (b) of this paragraph.

(3) NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.

(a) Following the establishment of a NO_x Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each NO_x authorized account representative.

(4) Recordation of NO_x allowance allocations.

(a) Upon approval of this Regional NO_x State Implementation Plan by the Administrator, the Administrator will record in the unit's compliance account NO_x allowances allocated to a NO_x Budget unit pursuant to Rule 335-3-8-.09(2)(a), and in accordance with Rule 335-3-8-.09(3) for the control periods in 2004, 2005, and 2006. Pursuant to subparagraph (d) of this paragraph, the year designated within each NO_x allowance's serial number shall determine the first control period in which the NO_x allowance is available for deduction for compliance.

(b) By May 1, 2004 and May 1 of every third year thereafter, the Administrator will record in the unit's compliance account all NO_x allowances allocated to a NO_x Budget unit pursuant to Rule 335-3-8-.09(2)(b), and in accordance with Rule 335-3-8-.09(3) for the control periods in the three years after the last year for which NO_x allowances were previously recorded. Pursuant to subparagraph (d) of this paragraph, the year designated within each NO_x allowance's serial number shall determine the first control period in which the NO_x allowance is available for deduction for compliance.

(c) For NO_x allowances allocated to a NO_x Budget opt-in unit under Rule 335-3-8-.13(9)(a), the Administrator will record the NO_x allowances in the unit's compliance account by May 1 of the control period for which the NO_x allowances were allocated.

(d) Serial numbers for allocated NO_x allowances. When allocating NO_x allowances to a NO_x Budget unit and recording them in an account, the Administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

(5) Compliance.

(a) NO_x allowance transfer deadline. The NO_x allowances are available to be deducted for compliance with a unit's NO_x Budget emissions limitation for a control period in a given year only if the NO_x allowances:

1. Were allocated for a control period in a prior year or the same year; and,
2. Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under Rule 335-3-8-.11(1) by the NO_x allowance transfer deadline for that control period.

(b) Deductions for compliance.

1. Following the recordation, in accordance with Rule 335-3-8-.11(2), of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the Administrator will deduct NO_x allowances available under subparagraph (a) of this paragraph to cover the unit's NO_x emissions (as determined in accordance with Rule 335-3-8-.12) for the control period:

- (i) From the compliance account; and,
- (ii) Only if no more NO_x allowances available under subparagraph (a) of this paragraph remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_x Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

2. The Administrator will deduct NO_x allowances first under subparagraph (b)1.(i) of this paragraph and then under paragraph (b)1.(ii) of this paragraph:

(i) Until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with Rule 335-3-8-.12, from the unit for the control period for which compliance is being determined, or

(ii) Until no more NO_x allowances available under subparagraph (a) of this paragraph remain in the respective account.

(c) Identification of NO_x allowances by serial number. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subparagraphs (b), (d), or (e) of this paragraph. Such

identification shall be made in the compliance certification report submitted in accordance with Rule 335-3-8-.08(1).

1. First-in, first-out. The Administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under subparagraph (c) of this paragraph, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO_x allowances that were allocated for the control period to the unit under Rules 335-3-8-.09 or 335-3-8-.13;

(ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to Rule 335-3-8-.11, in order of their date of recordation;

(iii) Those NO_x allowances that were allocated for a prior control period to the unit under Rules 335-3-8-.09 or 335-3-8-.13; and

(iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to Rule 335-3-8-.11, in order of their date of recordation.

(d) Deductions for excess emissions.

1. After making the deductions for compliance under subparagraph (b) of this paragraph, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

2. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

3. Any allowance deduction required under subparagraph (d) of this paragraph shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with Rule 335-3-8-.12:

1. The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Rule 335-3-8-.08(1).

2. Notwithstanding subparagraph (b)2.(i) of this paragraph, the Administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under subparagraph (e)1. of this paragraph) of the number of tons of NO_x emissions, as determined in accordance with Rule 335-3-8-.12, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

(f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subparagraphs (b), (d), or (e) of this paragraph.

(6) Banking.

(a) NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

1. Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under Rules 335-3-8-.08(2), 335-3-8-.10(5) and (6), 335-3-8-.11, or 335-3-8-.13.

2. The Administrator will designate, as a "banked" NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to paragraph (5) of this Rule (except deductions pursuant to subparagraph (5)(d)2. above) and that was allocated for that control period or a control period in a prior year.

(b) Each year starting in 2005, after the Administrator has completed the designation of banked NO_x allowances under subparagraph (a)2. of this paragraph and before May 1 of the year, the Administrator will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:

1. The Administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

2. If the total number of banked NO_x allowances determined, under subparagraph (b)1. of this paragraph, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with paragraph (5) of this Rule.

3. If the total number of banked NO_x allowances determined, under subparagraph (b)1. of this paragraph, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located, any banked allowance may be deducted for compliance in accordance with paragraph (5) of this Rule, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NO_x Budget units are located and divided by the total number of banked NO_x allowances determined, under subparagraph (b)1. of this paragraph, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The Administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined in subparagraph (i) above. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraph (5) of this Rule. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with paragraph (5) of this Rule, except that, if such NO_x allowances are used to make a deduction, two such NO_x allowances must be deducted for each deduction of one NO_x allowance required under paragraph (5) of this Rule.

(c) For any NO_x Budget unit that reduces its NO_x emission rate in the 2001, 2002 or 2003 control period, the owner or operator of the unit may request early reduction credits, and the Department may allocate NO_x allowances by May 1, 2004 to the unit in accordance with the following requirements.

1. Each NO_x Budget unit for which the owner or operator requests any early reduction credits under subparagraph (c)4. of this paragraph shall monitor NO_x emissions in accordance with Rule 335-3-8-.12 by May 1 of the control period prior to the control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during the control period prior to the control period for which such early reduction credits are requested, as well as each control period for which such early reduction credits are requested, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

2. NO_x emission rate and heat input under subparagraphs (c)3. through 5. of this paragraph shall be determined in accordance with Rule 335-3-8-.12.

3. Each NO_x Budget unit for which the owner or operator requests any early reduction credits under subparagraph (c)4. of this paragraph shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, below the lesser of the NO_x emission rate required under 40 CFR 76, including emission averaging under 40 CFR 76.11, or ADEM Admin Code R. 335-3-8-.03.

4. The NO_x authorized account representative of a NO_x Budget unit that meets the requirements of subparagraphs (c)1. and 3. of this paragraph may submit to the Department a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2001, 2002 or 2003 in accordance with subparagraph (c)3. of this paragraph.

(i) Except as provided in subparagraph (c)4.(iii) below, in the early reduction credit request, the NO_x authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the following:

(I) The unit's actual average NO_x emission rate in the ozone control period prior to the first ozone control period for which early reduction credits are requested; and,

(II) The unit's NO_x emission rate for the ozone control period in which the early reductions occurred, divided by 2000 lb/ton, and rounded to the nearest ton.

(ii) In the early reduction credit request for units subject to ADEM Admin Code R. 335-3-8-.03, the NO_x authorized account representative may request early reduction credits for 2003 in an amount equal to the difference between the allowable NO_x emission rate per million BTU of heat input and the actual seasonal NO_x emission rate multiplied by the total heat input of the subject units in the 2003 ozone control period.

(iii) The early reduction credit request must be submitted, in a format specified by the Department, by October 31 of the year in which the NO_x emission rate reductions on which the request is based are made or such later date approved by the Department.

5. The Department will allocate NO_x allowances to NO_x Budget units meeting the requirements of subparagraphs (c)1. and 3. of this paragraph and covered by early reduction requests meeting the requirements of subparagraph (c)4.(ii) of this paragraph, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the Department will accept the request only if the requirements of subparagraphs (c)1., (c)3., and (c)4.(ii) of this paragraph as well as subparagraphs 335-3-8-.10(7)(b), (c), and (d) are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirements of subparagraphs (c)2. and 4. of this paragraph.

(ii) If the State's compliance supplement pool has an amount of NO_x allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 through 2003 (as adjusted under subparagraph (c)5.(i) of this paragraph), the Department will allocate to each NO_x Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under subparagraph (c)5.(i) of this paragraph).

(iii) If the State's compliance supplement pool has a smaller amount of NO_x allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 through 2003 (as adjusted under subparagraph (c)5.(i) of this paragraph), the Department will allocate NO_x allowances to each NO_x Budget unit covered by such accepted requests according to the following formula:

Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits) / (Total adjusted early reduction credits requested by all units)] x (Available NO_x allowances from the State's compliance supplement pool) where:

"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2001 through 2003 in accepted early reduction credit requests, as adjusted under subparagraph (c)5.(i) of this paragraph.

"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2001 through 2003 in accepted early reduction credit requests, as adjusted under subparagraph (c)5.(i) of this paragraph.

"Available NO_x allowances from the State's compliance supplement pool" is the number of NO_x allowances in the State's compliance supplement pool and available for early reduction credits for 2001 through 2003.

6. By May 1, 2004, the Department will submit to the Administrator the allocations of NO_x allowances determined under subparagraph (c)5. of this paragraph. The Administrator will record such allocations to the extent that they are consistent with the requirements of subparagraphs (c)1. through 5. of this paragraph.

7. NO_x allowances recorded under subparagraph (c)6. of this paragraph may be deducted for compliance under paragraph (5) of this Rule for the control periods in 2004 or 2005. Notwithstanding subparagraph (a) of this paragraph, the Administrator will deduct as retired any NO_x allowance that is recorded under subparagraph (c)6. of this paragraph and is not deducted for compliance in accordance with paragraph (5) of this Rule for the control period in 2004 or 2005.

8. NO_x allowances recorded under subparagraph (c)6. of this paragraph are treated as banked allowances in 2005 for the purposes of subparagraphs (a) and (b) of this paragraph.

(7) Compliance Supplement Pool. The total number of allowances under the Compliance Supplement Pool will be determined upon promulgation of EPA's Phase II rules. The Department may issue the compliance supplement pool to NO_x Budget units that implement emissions reductions during the ozone season beyond all applicable requirements in years prior to 2004 according to the following provisions:

(a) The Department shall complete the issuance process by no later than May 31, 2004.

(b) The emissions reduction may not be required by the Alabama SIP or be otherwise required by the CAA.

(c) The emissions reduction must be verified by the source as actually having occurred between from May 1 through and including September 30 in any year in 2001 through 2003.

(d) Emissions reductions implemented by sources serving electric generators with a nameplate capacity greater than 25 MWe, or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250 mmBTU/hr, must be quantified in accordance with Rule 335-3-8-.12.

(e) The compliance supplement pool credits shall be available for the control periods of 2004 and 2005.

(f) Sources that receive credit according to the provisions of this Rule, may trade the credit to other sources or persons in a NO_x Budget Trading Program established, and approved by the Administrator pursuant to 40 CFR, § 51.121, or the Federal NO_x Budget Trading Program promulgated under 40 CFR 97, pursuant to 40 CFR § 52.34.

(8) Account error. The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NO_x authorized account representative for the account.

(9) Closing of general accounts.

(a) The NO_x authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under Rule 335-3-8-.11(1) an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the Administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NO_x allowances into the account under Rule 335-3-8-.11(1) or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: April 6, 2001.

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335-3-8-.11 NO_x Allowance Transfers.

(1) Submission of NO_x allowance transfers. The NO_x authorized account representative seeking recordation of a NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the Administrator:

- (a) The numbers identifying both the transferor and transferee accounts;
- (b) A specification by serial number of each NO_x allowance to be transferred; and
- (c) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

(2) EPA recordation.

(a) Within 5 business days of receiving a NO_x allowance transfer, except as provided in subparagraph (b) of this paragraph, the Administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:

- 1. The transfer is correctly submitted under paragraph (1) of this Rule;
- 2. The transferor account includes each NO_x allowance identified by serial number in the transfer; and
- 3. The transfer meets all other requirements of this Rule.

(b) A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_x allowance allocations in Rule 335-3-8-.10(4)(b).

(c) Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of subparagraph (a) of this paragraph, the Administrator will not record such transfer.

(3) Notification.

(a) Notification of recordation. Within 5 business days of recordation of a NO_x allowance transfer under Rule 335-3-8-.11(2), the Administrator will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of Rule 335-3-8-.11(2)(a), the Administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of:

- 1. A decision not to record the transfer, and,
- 2. The reasons for such non-recordation.

(c) Nothing in this Rule shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

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335-3-8-.12 Monitoring and Reporting.

(1) General requirements. The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit, shall comply with the monitoring and reporting requirements as provided in this Rule and in 40 CFR 75, Subpart H. For purposes of complying with such requirements, the definitions in Rule 335-3-8-.05(2) and in 40 CFR, § 72.2 shall apply, and the terms "affected unit", "designated representative", and "continuous emission monitoring system" (or "CEMS") in 40 CFR 75 shall be replaced by the terms "NO_x Budget unit", "NO_x authorized account representative", and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in Rule 335-3-8-.05(2).

(a) Requirements for installation, certification, and data accounting. The owner or operator of each NO_x Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, as provided in Rule 335-3-8-.13:

1. Install all monitoring systems required under this Rule for monitoring NO_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input, and flow, in accordance with 40 CFR, §§ 75.72 and 75.75.

2. Install all monitoring systems for monitoring heat input, if required under paragraph (7) of this Rule for developing NO_x allowance allocations.

3. Successfully complete all certification tests required under paragraph (2) of this Rule and meet all other provisions of this Rule and 40 CFR 75 applicable to the monitoring systems under subparagraphs (a)1. and 2. of this paragraph.

4. Record, and report data from the monitoring systems under subparagraphs (a)1. and 2. of this paragraph.

(b) Compliance dates. The owner or operator must meet the requirements of subparagraphs (a)1. through (a)3. of this paragraph on or before the following dates and must record and report data on and after the following dates:

1. NO_x Budget units for which the owner or operator intends to apply for early reduction credits under Rule 335-3-8-.10(6)(c), must comply with the requirements of this Rule by May 1 of the control period prior to the control period for which such early reduction credits are requested.

2. Except for NO_x Budget units under subparagraph (b)1. above, NO_x Budget units under Rule 335-3-8-.05(4) that commence operation before January 1, 2002, must comply with the requirements of this Rule by May 1, 2003.

3. NO_x Budget units under Rule 335-3-8-.05(4) that commence operation on or after January 1, 2002 and that report on an annual basis under subparagraph (5)(b) of this Rule must comply with the requirements of this Rule by the later of the following dates:

(i) May 1, 2003; or

(ii) The earlier of:

(I) 180 days after the date on which the unit commences operation or,

(II) For units under Rule 335-3-8-.05(4)(a)1., 90 days after the date on which the unit commences commercial operation.

4. NO_x Budget units under Rule 335-3-8-.05(4) that commence operation on or after January 1, 2002 and that report on a control season basis under subparagraph (5)(b) of this Rule must comply with the requirements of this Rule by the later of the following dates:

(i) The earlier of:

(I) 180 days after the date on which the unit commences operation or,

(II) For units under Rule 335-3-8-.05(4)(a)1., 90 days after the date on which the unit commences commercial operation.

(ii) However, if the applicable deadline under subparagraph (b)4.(i) of this paragraph does not occur during a control period, May 1 immediately following the date determined in accordance with subparagraph (b)4.(i) of this paragraph.

5. For a NO_x Budget unit with a new stack or flue for which construction is completed after the applicable deadline under subparagraphs (b)1., (b)2. or (b)3. of this paragraph or Rule 335-3-8-.13:

(i) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

(ii) However, if the unit reports on a control season basis under subparagraph (5)(d) of this Rule and the applicable deadline under subparagraph (b)5.(i) of this paragraph does not occur during the control period, May 1 immediately following the applicable deadline in subparagraph (b)5.(i) of this paragraph.

6. For a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, the compliance dates specified under Rule 335-3-8-.13.

(c) Reporting data prior to initial certification.

1. The owner or operator of a NO_x Budget unit that misses the certification deadline under subparagraph (b)1. is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under subparagraph (b)2. of this paragraph.

2. The owner or operator of a NO_x Budget unit under subparagraphs (b)3. or (b)4. of this paragraph must determine, record and report NO_x mass, heat input rate (if required for purposes of

allocations) and any other values required to determine NO_x mass emissions (e.g. NO_x emission rate and heat input or NO_x concentration and stack flow) using the provisions of 40 CFR, § 75.70(g), from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under Appendix D or E of Part 75, or excepted monitoring methodology under § 75.19 is provisionally certified.

(d) Prohibitions.

1. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR, § 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with paragraph (6) of this Rule.

2. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR, § 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this Rule and 40 CFR 75, except as provided for in § 75.74.

3. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR, § 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this Rule and 40 CFR 75 except as provided for in § 75.74.

4. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR, § 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this Rule, except under any one of the following circumstances:

(i) During the period that the unit is covered by a retired unit exemption under Rule 335-3-8-.05(5) that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this Rule and 40 CFR 75, by the Department for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with subparagraph (2)(b)2. below.

(2) Initial certification and recertification procedures.

(a) The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR 75, except that:

1. If, prior to January 1, 1998, the Administrator approved a petition under 40 CFR, § 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR, § 75.66 for an alternative to a requirement in 40 CFR, § 75.17, the NO_x authorized account representative shall resubmit the petition to the Administrator under subparagraph (6)(a) of this Rule to determine if the approval applies under the NO_x Budget Trading Program.

2. For any additional CEMS required under the common stack provisions in 40 CFR, § 75.72, or for any NO_x concentration CEMS used under the provisions of 40 CFR, § 75.71(a)(2), the owner or operator shall meet the requirements of subparagraph (b) of this paragraph.

(b) The owner or operator of a NO_x Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR, § 75.19 shall also meet the requirements of subparagraph (c) of this paragraph and the owner or operator of a unit that qualifies to use an alternative monitoring system under Subpart E of 40 CFR 75 shall also meet the requirements of subparagraph (d) of this paragraph. The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR, § 75.72, or that uses a NO_x concentration CEMS under 40 CFR, § 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.

1. Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by 40 CFR 75, Subpart H (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR, § 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in subparagraph (1)(b) of this Rule. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification according to 40 CFR, § 75.20 is required.

2. Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the Department determines significantly affects the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the requirements of 40 CFR, § 75.21 or 40 CFR 75, Appendix B, the owner or operator shall recertify the monitoring system according to 40 CFR, § 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the Department determines to significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR, § 75.20(b). Examples of changes which require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

3. Certification approval process for initial certifications and recertification.

(i) Notification of certification. The NO_x authorized account representative shall submit to the Department, and the appropriate EPA Regional Office, a written notice of the dates of certification in accordance with paragraph (4) of this Rule.

(ii) Certification application. The NO_x authorized account representative shall submit to the Department a certification application for each monitoring system required under 40 CFR 75, Subpart H. A complete certification application shall include the information specified in 40 CFR 75, Subpart H.

(iii) Except for units using the low mass emission excepted methodology under 40 CFR, § 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR, § 75.20(a)(3). A provisionally certified monitor may be used under the NO_x Budget Trading Program for a period not to exceed 120 days after receipt by the Department of the complete certification application for the monitoring system or component thereof under subparagraph (b)3.(ii) of this paragraph. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR 75, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Department.

(iv) Certification application formal approval process. The Department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of

receipt of the complete certification application under subparagraph (b)3.(ii) of this paragraph. In the event the Department does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of 40 CFR 75 and is included in the certification application will be deemed certified for use under the NO_x Budget Trading Program.

(I) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR 75, then the Department will issue a written notice of approval of the certification application within 120 days of receipt.

(II) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under subparagraph (b)3.(ii) of this paragraph has been received by the Department. If the certification application is not complete, then the Department will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the Department may issue a notice of disapproval under subparagraph (b)3.(iv)(III) of this paragraph.

(III) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under subparagraph (b)3.(iv)(II) of this paragraph has been met, the Department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subparagraph (b)3.(v) of this paragraph for each monitoring system or component thereof which is disapproved for initial certification.

(IV) Audit decertification. The Department may issue a notice of disapproval of the certification status of a monitor in accordance with subparagraph (3)(b) of this Rule.

(v) Procedures for loss of certification. If the Department issues a notice of disapproval of a certification application under subparagraph (b)3.(iv)(III) of this paragraph or a notice of disapproval of certification status under subparagraph (b)3.(iv)(IV) of this paragraph, then:

(I) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(b)(5), § 75.20(h)(4), or § 75.21(e) and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i):

I. For units that the owner or operator intends to monitor or monitors for NO_x emission rate and heat input rate or intends to determine or determines NO_x mass emissions using the low mass emission excepted methodology under 40 CFR, § 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit;

II. For units that the owner or operator intends to monitor or monitors for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR 75;

(II) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subparagraphs (b)3.(i) and (ii) of this paragraph; and

(III) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(c) Initial certification and recertification procedures for low mass emission units using the excepted methodologies under 40 CFR, § 75.19. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR, § 75.19 and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements of 40 CFR, § 75.10, and the applicable requirements of 40 CFR, § 75.19. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of subparagraph (b) of this Rule, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program as of the following dates:

1. For a unit that does not have monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under § 75.19 for the unit, starting on the date of such submission until the completion of the period for the Department's review.

2. For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under § 75.19 for the unit, and that reports data on an annual basis under Rule 335-3-8-.12(5)(d), starting January 1 of the year after the year of such submission until the completion of the period for the Department's review.

3. For a unit that has monitoring equipment initially certified or recertified for the NO_x Budget Trading Program as of the date on which the NO_x authorized account representative submits the certification application under § 75.19 for the unit, and that reports data on a control season basis under Rule 335-3-8-.12(5)(d), starting May 1 of the control period after the year of such submission until the completion of the period for the Department's review.

(d) Certification/recertification procedures for alternative monitoring systems. The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the Department under 40 CFR 75, Subpart E shall apply for certification to the Department prior to use of the system under the NO_x Trading Program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subparagraph (b) of this paragraph. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subparagraph (b)3. of this paragraph and 40 CFR, § 75.20(f).

(3) Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance requirements of 40 CFR 75, Appendix B, data shall be substituted using the applicable procedures in Subpart D, Appendix D, or Appendix E of 40 CFR 75.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under paragraph (2) of this Rule or the applicable provisions 40 CFR 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of such system or component. For the purposes of this subparagraph, an audit shall be either a field audit or an audit of any information submitted to the Department or the Administrator. By issuing the notice of disapproval, the Department revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes

subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in paragraph (2) of this Rule for each disapproved system.

(4) Notifications. The NO_x authorized account representative for a NO_x Budget unit shall submit written notice to the Department and the Administrator in accordance with 40 CFR, § 75.61, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the Department.

(5) Recordkeeping and reporting.

(a) General provisions.

1. The NO_x authorized account representative shall comply with all recordkeeping and reporting requirements in this paragraph and with the requirements of Rule 335-3-8-.06(1)(e).

2. If the NO_x authorized account representative for a NO_x Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under Subpart F or G of 40 CFR 75 and which includes data and information required under this Rule or 40 CFR 75, Subpart H is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR 72, the submission must also be signed by the designated representative or the alternative designated representative.

(b) Monitoring plans.

1. The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR, § 75.62, except that the monitoring plan shall also include all of the information required by 40 CFR 75, Subpart H.

2. The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of 40 CFR, § 75.62, except that the monitoring plan is only required to include the information required by 40 CFR 75, Subpart H.

(c) Certification applications. The NO_x authorized account representative shall submit an application to the Department within 45 days after completing all initial certification or recertification tests required under paragraph (2) of this Rule including the information required under 40 CFR 75, Subpart H.

(d) Quarterly reports. The NO_x authorized account representative shall submit quarterly reports, as follows:

1. If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO_x budget unit chooses to meet the annual reporting requirements of this Rule, the NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For units that elect to comply with the early reduction credit provisions under Rule 335-3-8-.10(6)(c), the calendar quarter that includes the date of initial provisional certification under subparagraphs (2)(b)3.(iii) or (2)(c) of this Rule. Data should be recorded and reported from the date and hour corresponding to the date and hour of provisional certification;

(ii) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by the date under subparagraph (1)(b)1. of this Rule, the earlier of the calendar quarter that includes the date of initial provisional certification under subparagraph (2)(b)3.(iii) or (2)(c) of this Rule or, if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or

(iii) For a unit that commences operation on or after May 1, 2002, the calendar quarter in which the unit commences operation, data shall be reported from the date and hour corresponding to when the unit commenced operation.

2. If a NO_x budget unit is not subject to an Acid Rain emission limitation, then the NO_x authorized account representative shall either:

(i) Meet all of the requirements of 40 CFR 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in subparagraph (d)1. of this paragraph; or

(ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under 40 CFR, § 75.74(d)(3) through September 30 of each year in accordance with the provisions of 40 CFR, § 75.74(c)(6). The NO_x authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:

(I) For units that elect to comply with the early reduction credit provisions under Rule 335-3-8-.10(6)(c), the calendar quarter that includes the date of initial provisional certification under subparagraphs (2)(b)3.(iii) or (2)(c) of this Rule. Data should be recorded and reported from the date and hour corresponding to the date and hour of provisional certification;

(II) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by the date under subparagraph (1)(b)1. of this Rule, the earlier of the calendar quarter that includes the date of initial provisional certification under subparagraph (2)(b)3.(iii) or (2)(c) of this Rule, or if the certification tests are not completed by May 1, 2003, the partial calendar quarter from May 1, 2003 through June 30, 2003. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2003; or

(III) For units that commence operation on or after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or

(IV) For units that commence operation on or after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subparagraph (2)(b)3.(iii) or (2)(c) of this Rule or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

(V) For units that commence operation on or after May 1, 2002 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under subparagraph (2)(b)3.(iii) or (2)(c) of this Rule or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.

3. The NO_x authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in 40 CFR 75 and 40 CFR, § 75.64.

(i) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in 40 CFR 75, Subpart H for each NO_x Budget unit (or group of units using a common stack) as well as information required in 40 CFR 75, Subpart G.

(ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in 40 CFR 75, Subpart H for each NO_x Budget unit (or group of units using a common stack).

4. Compliance certification. The NO_x authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this Rule and 40 CFR 75, including the quality assurance procedures and specifications; and

(ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR, § 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_x emissions; and

(iii) For a unit that is reporting on a control period basis under subparagraph (d) of this paragraph, the NO_x emission rate and NO_x concentration values substituted for missing data under 40 CFR 75, Subpart D are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

(6) Petitions.

(a) The NO_x authorized account representative of a NO_x Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR, § 75.66 to the Administrator requesting approval to apply an alternative to any requirement of this Rule.

1. Application of an alternative to any requirement of this Rule is in accordance with this Rule only to the extent that the petition is approved by the Administrator, in consultation with the Department.

2. Notwithstanding subparagraph (a)1. of this paragraph, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR, § 75.72, the petition is governed by subparagraph (b) of this paragraph.

(b) The NO_x authorized account representative of a NO_x Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under 40 CFR, § 75.66 to the Department and the Administrator requesting approval to apply an alternative to any requirement of this Rule.

1. The NO_x authorized account representative of a NO_x Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under 40 CFR, § 75.66 to the Department and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR, § 75.72 or a NO_x concentration CEMS used under 40 CFR, § 75.71(a)(2).

2. Application of an alternative to any requirement of this Rule is in accordance with this Rule only to the extent the petition under subparagraph (b) of this paragraph is approved by both the Department and the Administrator.

(7) Additional requirements to provide heat input data for allocations purposes.

(a) The owner or operator of a unit that elects to monitor and report NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75.

(b) The owner or operator of a unit that elects to monitor and report NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR 75 for any source that is applying for early reduction credits under Rule 335-3-8-.10(6).

(8) Alabama emission reporting requirements for NO_x Budget Units.

(a) The owner or operator of a NO_x budget unit under Rule 335-3-8-.05(4) shall submit NO_x ozone season emissions data as follows:

1. Annual reporting. For each NO_x budget unit, beginning with emission year 2004 and every year thereafter, by March 31st of the calendar year following the emission year being reported, the data specified in 40 CFR, §§ 51.122(c)(1) and (2) must be submitted to the Department.

2. Triennial reporting. For each NO_x budget unit, beginning with emission year 2005 and every third year thereafter, by March 31st of the calendar year following the emission year being reported, the data specified in 40 CFR, § 51.122(c)(3) must be submitted to the Department.

3. Year 2003 reporting. For each NO_x budget unit, by March 31, 2004, the data specified in 40 CFR, § 51.122(c)(3) must be submitted to the Department.

4. Year 2007 reporting. For each NO_x budget unit, by March 31, 2008, the data specified in 40 CFR, § 51.122(c)(3) must be submitted to the Department.

(b) The data required under subparagraph (a) of this paragraph shall be submitted electronically to the Department in a format prescribed and provided by the Department.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-22A-5, 22-22A-6, 22-22A-8, 22-28-14, 22-28-19, and 22-28-20.

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Amended:

| | Date Submitted to EPA | Date Approved by EPA | Federal Register |
|--------------|--------------------------|-------------------------|---------------------|
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335-3-8-.13 Individual Unit Opt-ins.

(1) Applicability. A unit that is in the Counties of Autauga, Bibb, Blount, Calhoun, Chambers, Cherokee, Chilton, Clay, Cleburne, Colbert, Coosa, Cullman, Dallas, Dekalb, Elmore, Etowah, Fayette, Franklin, Greene, Hale, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Macon, Madison, Marion, Marshall, Morgan, Perry, Pickens, Randolph, Russell, Shelby, St. Clair, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Winston, is not a NO_x Budget unit under Rule 335-3-8-.05(4)(a), vents all of its emissions to a stack, and is operating, may qualify, under this Rule, to become a NO_x Budget opt-in source. A unit that is a NO_x Budget unit, is covered by a retired unit exemption under Rule 335-3-8-.05(5) that is in effect, or is not operating is not eligible to become a NO_x Budget opt-in source.

(2) General. Except otherwise as provided in this Rule, a NO_x Budget opt-in source shall be treated as a NO_x Budget unit for purposes of applying Rules 335-3-8-.05 through 335-3-8-.08 and 335-3-8-.10 through 335-3-8-.13.

(3) NO_x authorized account representative. A unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, or a NO_x Budget opt-in source, located at the same source as one or more NO_x Budget units, shall have the same NO_x authorized account representative as such NO_x Budget units.

(4) Applying for NO_x Budget opt-in permit.

(a) Applying for initial NO_x Budget opt-in permit. In order to apply for an initial NO_x Budget opt-in permit, the NO_x authorized account representative of a unit qualified under paragraph (1) of this Rule may submit to the Department at any time, except as provided under paragraph (7)(g) of this Rule:

1. A complete NO_x Budget permit application under Rule 335-3-8-.07(3);
2. A monitoring plan submitted in accordance with Rule 335-3-8-.12; and
3. A complete account certificate of representation under Rule 335-3-8-.06(4), if no NO_x authorized account representative has been previously designated for the unit.

(b) Duty to reapply. The NO_x authorized account representative of a NO_x Budget opt-in source shall submit a complete NO_x Budget permit application under Rule 335-3-8-.07(3) to renew the NO_x Budget opt-in permit in accordance with Rule 335-3-8-.07(2)(d) and, if applicable, an updated monitoring plan in accordance with Rule 335-3-8-.12.

(5) Opt-in process. The Department will issue or deny a NO_x Budget opt-in permit for a unit for which an initial application for a NO_x Budget opt-in permit under paragraph (4) above is submitted, in accordance with Rule 335-3-8-.07(1) and the following:

(a) Interim review of monitoring plan. The Department will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x Budget opt-in permit under paragraph (4) above. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with Rule 335-3-8-.12. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the Department determines that the unit's monitoring plan is sufficient under subparagraph (a) of this paragraph and after completion of monitoring system certification under Rule 335-3-8-.12, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with Rule 335-3-8-.12 for one full control period during which monitoring system availability is not less than 90

percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_x Budget unit" prior to issuance of a NO_x Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under subparagraph (b) of this paragraph above, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x emissions (in lb) for the control period divided by the unit's baseline heat rate.

(d) After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under subparagraph (c) of this paragraph, the Department will serve a draft NO_x Budget opt-in permit on the NO_x authorized account representative of the unit.

(e) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NO_x Budget opt-in permit, the NO_x authorized account representative of the unit must submit to the Department a confirmation of the intention to opt-in the unit or a withdrawal of the application for a NO_x Budget opt-in permit under paragraph (4) above. The Department will treat the failure to make a timely submission as a withdrawal of the NO_x Budget opt-in permit application.

(f) Issuance of draft NO_x Budget opt-in permit. If the NO_x authorized account representative confirms the intention to opt-in the unit under subparagraph (e) of this paragraph, the Department will issue the draft NO_x Budget opt-in permit in accordance with Rule 335-3-8-.07(1).

(g) Notwithstanding subparagraphs (a) through (f) of this paragraph, if at any time before issuance of a draft NO_x Budget opt-in permit for the unit, the Department determines that the unit does not qualify as a NO_x Budget opt-in source under paragraph (1) of this Rule, the Department will issue a draft denial of a NO_x Budget opt-in permit for the unit in accordance with Rule 335-3-8-.07(1).

(h) Withdrawal of application for NO_x Budget opt-in permit. A NO_x authorized account representative of a unit may withdraw its application for a NO_x Budget opt-in permit under paragraph (4) of this Rule at any time prior to the issuance of the final NO_x Budget opt-in permit. Once the application for a NO_x Budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to reapply must submit a new application for a NO_x Budget permit under paragraph (4) of this Rule.

(i) Effective date. The effective date of the initial NO_x Budget opt-in permit shall be May 1, with the exception of the year 2004 in which case the date would be May 31, of the first control period starting after the issuance of the initial NO_x Budget opt-in permit by the Department. The unit shall be a NO_x Budget opt-in source and a NO_x Budget unit as of the effective date of the initial NO_x Budget opt-in permit.

(6) NO_x Budget opt-in permit contents.

(a) Each NO_x Budget opt-in permit (including any draft or proposed NO_x Budget opt-in permit, if applicable) will contain all elements required for a complete NO_x Budget opt-in permit application under Rule 335-3-8-.07(3).

(b) Each NO_x Budget opt-in permit is deemed to incorporate automatically the definitions of terms under Rule 335-3-8-.05(2) and, upon recordation by the Administrator under Rules 335-3-8-.10, 335-3-8-.11, or 335-3-8-.13, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x Budget opt-in source covered by the NO_x Budget opt-in permit or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located.

(7) Withdrawal from NO_x Budget Trading Program.

(a) Requesting withdrawal. To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x Budget opt-in source shall submit to the Department a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) Conditions for withdrawal. Before a NO_x Budget opt-in source covered by a request under subparagraph (a) of this paragraph may withdraw from the NO_x Budget Trading Program and the NO_x Budget opt-in permit may be terminated under subparagraph (e) of this paragraph, the following conditions must be met:

1. For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the Department an annual compliance certification report in accordance with Rule 335-3-8-.08(1).

2. If the NO_x Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, the full amount required under Rule 335-3-8-.10(5)(d) for the control period.

3. After the requirements for withdrawal under subparagraphs (b)1. and 2. of this paragraph are met, the Administrator will deduct from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to that source under paragraph (9) of this Rule for any control period for which the withdrawal is to be effective. The Administrator will close the NO_x Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt-in source. The NO_x authorized account representative for the NO_x Budget opt-in source shall become the NO_x authorized account representative for the general account.

(c) A NO_x Budget opt-in source that withdraws from the NO_x Budget Trading Program shall comply with all requirements under the NO_x Budget Trading Program concerning all years for which such NO_x Budget opt-in source was a NO_x Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) Notification.

1. After the requirements for withdrawal under subparagraphs (a) and (b) of this paragraph are met (including deduction of the full amount of NO_x allowances required), the Department will issue a notification to the NO_x authorized account representative of the NO_x Budget opt-in source of the acceptance of the withdrawal of the NO_x Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

2. If the requirements for withdrawal under subparagraphs (a) and (b) of this paragraph are not met, the Department will issue a notification to the NO_x authorized account representative of the NO_x Budget opt-in source that the NO_x Budget opt-in source's request to withdraw is denied. If the NO_x Budget opt-in source's request to withdraw is denied, the NO_x Budget opt-in source shall remain subject to the requirements for a NO_x Budget opt-in source.

(e) Permit amendment. After the Department issues a notification under subparagraph (d)1. of this paragraph that the requirements for withdrawal have been met, the Department will revise the NO_x Budget permit covering the NO_x Budget opt-in source to terminate the NO_x Budget opt-in permit as of the effective date specified under subparagraph (d)1. of this paragraph. A NO_x Budget opt-in source shall continue to be a NO_x Budget opt-in source until the effective date of the termination.

(f) Reapplication upon failure to meet conditions of withdrawal. If the Department denies the NO_x Budget opt-in source's request to withdraw, the NO_x authorized account representative may submit it another request to withdraw in accordance with subparagraphs (a) and (b) of this paragraph.

(g) Ability to return to the NO_x Budget Trading Program. Once a NO_x Budget opt-in source withdraws from the NO_x Budget Trading Program and its NO_x Budget opt-in permit is terminated under this paragraph, the NO_x authority account representative may not submit another application for a NO_x Budget opt-in permit under paragraph (4) of this Rule for the unit prior to the date that is 4 years after the date on which the terminated NO_x Budget opt-in permit became effective.

(8) Change in regulatory status.

(a) Notification. When a NO_x Budget opt-in source becomes a NO_x Budget unit under Rule 335-3-8-.05(4)(a), the NO_x authorized account representative shall notify in writing the Department and the Administrator of such change in the NO_x Budget opt-in source's regulatory status, within 30 days of such change.

(b) Department's and Administrator's action.

1. When the NO_x Budget opt-in source becomes a NO_x Budget unit under Rule 335-3-8-.05(4), the Department will revise the NO_x Budget opt-in source's NO_x Budget opt-in permit to meet the requirements of a NO_x Budget permit under Rule 335-3-8-.07(4) as of an effective date that is the date on which such NO_x Budget opt-in source becomes a NO_x Budget unit under Rule 335-3-8-.05(4).

(i) The Administrator will deduct from the compliance account for the NO_x Budget unit under subparagraph (b)1. of this paragraph, or the overdraft account of the NO_x Budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as follows:

(I) Any NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in source) under paragraph (9) of this Rule for any control period after the last control period during which the unit's NO_x Budget opt-in permit was effective; and

(II) If the effective date of the NO_x Budget permit revision under subparagraph (b)1. of this paragraph is during a control period, the NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in source) under paragraph (9) of this Rule for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subparagraph (b)1. of this paragraph, divided by the total number of days in the control period.

(ii) The NO_x authorized account representative shall ensure that the compliance account of the NO_x Budget unit under subparagraph (b)1. of this paragraph, or the overdraft account of the NO_x Budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subparagraph (b)1.(i) of this paragraph. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(iii) For every control period during which the NO_x Budget permit revised under subparagraph (b)1. of this paragraph is effective, the NO_x Budget unit under subparagraph (b)1. of this paragraph will be treated, solely for purposes of NO_x allowance allocations under Rule 335-3-8-.09(3), as a unit that commenced operation on the effective date of the NO_x Budget permit revision under subparagraph (b)1. of this paragraph and will be allocated NO_x allowances under Rule 335-3-8-.09(3).

(iv) Notwithstanding subparagraph (b)1.(iii) above, if the effective date of the NO_x Budget permit revision under subparagraph (b)1. of this paragraph is during a control period, the following number of NO_x allowances will be allocated to the NO_x Budget unit under subparagraph (b)1. of this paragraph under Rule 335-3-8-.09 for the control period: the number of NO_x allowances otherwise allocated to the NO_x Budget unit under Rule 335-3-8-.09 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subparagraph (b)1. of this paragraph, divided by the total number of days in the control period.

2. When the NO_x authorized account representative of a NO_x Budget opt-in source does not renew its NO_x Budget opt-in permit under subparagraph (4)(b) of this Rule, the Administrator will deduct from the NO_x Budget opt-in unit's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to the NO_x Budget opt-in source under paragraph (9) of this Rule for any control period after the last control period for which the NO_x Budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x Budget opt-in source's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located includes the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(i) After the deduction under subparagraph (b)2. of this paragraph is completed, the Administrator will close the NO_x Budget opt-in source's compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under Rule 335-3-8-.10(5), the Administrator will close the NO_x Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt-in source. The NO_x authorized account representative for the NO_x Budget opt-in source shall become the NO_x authorized account representative for the general account.

(9) NO_x allowance allocations to opt-in units.

(a) NO_x allowance allocation.

1. By December 31 immediately before the first control period for which the NO_x Budget opt-in permit is effective, the Department will allocate NO_x allowances to the NO_x Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with subparagraph (b) of this paragraph.

2. By no later than December 31, after the first control period for which the NO_x Budget opt-in permit is in effect, and December 31 of each year thereafter, the Department will allocate NO_x allowances to the NO_x Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with subparagraph (b) of this paragraph.

(b) For each control period for which the NO_x Budget opt-in source has an approved NO_x Budget opt-in permit, the NO_x Budget opt-in source will be allocated NO_x allowances in accordance with the following procedures:

1. The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the lesser of:

(i) The NO_x Budget opt-in source's baseline heat input determined pursuant to subparagraph (5)(c) of this Rule; or

(ii) The NO_x Budget opt-in source's heat input, as determined in accordance with Rule 335-3-8-.12, for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated.

2. The Department will allocate NO_x allowances to the NO_x Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under subparagraph (b)1. of this paragraph multiplied by the lesser of:

(i) The NO_x Budget opt-in source's baseline NO_x emissions rate (in lb/mmBtu) determined pursuant to subparagraph (5)(c) of this Rule; or

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the NO_x Budget opt-in source during the control period.

Author: Ronald W. Gore

Statutory Authority: Code of Alabama 1975, §§22-28-10, 22-28-11, 22-28-14, 22-28-18, 22-28-20, 22-28-22, 22-22A-5, 22-22A-6, and 22-22A-8.

History: Effective Date: April 6, 2001.

Amended:

| | Date Submitted to EPA | Date Approved by EPA | Federal Register |
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| Original Reg | MAR 12, 2001 | July 16, 2001 | 66 FR 36919 |

335-3-8-.14 New Combustion Sources.

(1) No person shall cause or permit emissions of nitrogen oxides from a new gas-fired boiler with a capacity of 250 million BTU/hr or more in excess of 0.20 pounds per million BTU of heat input per hour.

(2) No person shall cause or permit emissions of nitrogen oxides from a new oil-fired boiler with a capacity of 250 million BTU/hr or more in excess of 0.30 pounds per million BTU of heat input per hour.

(3) No person shall cause or permit emission of nitrogen oxides from a new coal-fired boiler with a capacity of 250 million BTU per hour or more in excess of 0.7 pounds per million BTU of heat input per hour.

(4) For purposes of this Rule, the total heat input from all similar fuel combustion units at a plant or premises shall be used for determining the maximum allowable emission of nitrogen oxides that passes through a stack or stacks.

Author: James W. Cooper and John E. Daniel

Statutory Authority: Code of Alabama 1975, §§22-28-14, 22-22A-5, 22-22A-6, and 22-22A-8.

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